APPENDIX A

STATE OF MICHIGAN

IN THE CIRCUIT COURT
FOR THE COUNTY OF INGHAM

THE COMMISSIONER OF
INSURANCE OF THE STATE
OF MICHIGAN,

Plaintiff.

vs. File No. 95-80798-CZ

GEORGE R. ALBINO, et al.,

Defendant.
_____/

MOTION FOR SUMMARY DISPOSITION

BEFORE THE HONORABLE THOMAS L. BROWN,
CIRCUIT JUDGE, LANSING, MICHIGAN —
MONDAY, MARCH 18, 1996

APPEARANCES:

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On behalf of the Plaintiff

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ELIZABETH TANIS

Reported by: (Teresa J. Gallegos,) CSR-3445
Lansing, Michigan
March 18, 1996
at about 3:05 p.m.

THE COURT: The Insurance Commissioner of Michigan versus Albino, docket 80798. Motion for summary disposition. Mr. Alter?

MR. WALSH: Yes, Your Honor.

THE COURT: You may proceed.

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MR. RALLS: Yes, Your Honor, Bill Ralls of the law firm Butzel and Long appearing on behalf of Ernst & Young-Canada. It's my pleasure this afternoon, Judge Brown, to introduce the attorney who will argue our motion for summary disposition for lack of personal jurisdiction over Ernst & Young-Canada. We had filed a motion requesting the Court to

permit Elizabeth E. Tanis of Sutherland, Asbill & Brennan to appear pro hac vice on behalf of Ernst & Young-Canada in this action. Your Honor has entered an order already. Ms. Tanis is a member of the Bar of Georgia and I am pleased to have her here today to argue the motion on behalf of our clients.

THE COURT: Okay.

MS. TANIS: May it please the Court, as Mr. Ralls said, my name is Beth Tanis. I represent the Canadian --

THE COURT: How do you spell the last name?

MS. TANIS: T as in Tom, a-n-i-s. I represent the Canadian partnership of Ernst & Young as which I will be referring to as Ernst & Young-Canada.

As Mr. Ralls stated, we are here today on Ernst & Young Canada's motion for summary disposition for lack of personal jurisdiction. Your Honor, the personal jurisdiction inquiry is first and foremost a constitutional inquiry. Our argument unlike the officers and directors argument does focus more on the fundamental due process principles at work in any personal jurisdiction inquiry. Michigan, like every other state, does have a long arm statute for conferring personal jurisdiction over non-resident Defendants. But the Michigan Supreme Court has repeatedly held that the first inquiry must be whether personal jurisdiction exists under the due process clause of the United States Constitution. The constitutional analysis requires a Plaintiff to prove three things: There are three requirements. First, Plaintiff needs to prove that the non-resident Defendant has purposefully availed itself of the privilege of doing business in the State of Michigan. And that availment needs to be a deliberate undertaking such that is the non-resident Defendant

is enjoying the benefits of protection of Michigan laws. If the Plaintiff can establish purposeful availment, the Plaintiff must also prove a second requirement, due process, which is that the cause of action arose from the non-resident Defendants' contacts with the State of Michigan. And if the Plaintiff can prove this as well, Plaintiff still needs to show a third requirement, which is the Defendants' contact with the State of Michigan were so substantial that it's fair and reasonable under the circumstances to confer personal jurisdiction.

The focus on the constitutional analysis, Your Honor, is on the conduct of the non-resident Defendant who is contesting personal jurisdiction. The focus is not on that Defendant, co-Defendants. The focus is not on the Plaintiff, the focus is not on third parties. So in this case the focus must be on Ernst & Young-Canada's contracts with the State of Michigan.

Your Honor, I am going to describe for the Court some of the basic facts about Ernst & Young-Canada, that are relevant to the personal jurisdiction inquiry. All of the facts that I am about to tell the Court are substantiated by affidavits which we have filed in support of our motion. Virtually none of these facts has been refuted by the Plaintiff, and none of these facts has been refuted with any kind of evidence by the Plaintiff.

First, Ernst & Young-Canada's partnership is formed pursuant to the laws of Ontario Canada. It is a firm of chartered accountants. As the Court is probably aware, Canada does not have certified public accountants or CPA's as it has chartered accountants. Ernst & Young-Canada being sued in this Court on the basis of audit opinions that it issued with respect to the financial statements with Confederation Life Company or CLIC.

The first paragraph of Plaintiff's complaint allegation, appropriately and accurately, that CLIC is a Canadian Company. Ernst & Young-Canada's audit opinions on CLIC's financial statements expressly state that those audit opinions are based on Canadian audit standards on Canadian generally-accepted accounting principles and certain requirements of Canadian regulatory agencies. None of Ernst & Young-Canada's audit work for CLIC was performed in the State of Michigan. Not one piece of that audit work. Thus, Your Honor, what we have in this case is a Canadian accounting firm being sued for work it performed for a Canadian client, with that work performed pursuant to Canadian professional standards, and that work performed wholly outside the State of Michigan.

Your Honor, there is no case in the State of Michigan or elsewhere in this country that has found that personal jurisdiction under these circumstances may be confirmed within the confines of the due process clause of the Constitution.

THE COURT: It's possible this is the first, then?

MS. TANIS: Your Honor, there are cases that would say that this Court cannot confer personal jurisdiction over Ernst & Young-Canada and be within the confines of the due process clause of the United States Constitution.

In fact, we only have one case that we have been able to find anywhere in the country, which -- in which a non-resident Defendant who was being sued for work performed for a non-resident Plaintiff, which is what we have here, that's the 6th Circuit Court opinion in Hatim, in which we attached to our opening brief. In that case, Your Honor, the Court held that personal jurisdiction could not attach to that case. That the

minimum contacts required by the due process clause were not present. That is the only case that we have been able to find where you have an out-of-state professional Defendant and an out-of-state client.

Your Honor, with respect to the Ernst & Young-Canada engagement themselves that are at issue in this case, those engagements came about because CLIC, as a Canadian company, is heavily regulated by Canadian statute and by Canadian regulatory agencies. One of the Canadian statutory requirements for an insurance company in Canada is that CLIC would have its financial statements audited annually by a firm of chartered accountants pursuant to Canadian accounting standards.

As I stated earlier, Ernst & Young-Canada is a firm of chartered accountants. It has its principal office in Toronto, Canada. In accordance with the Canadian law governing CLIC, CLIC engaged Ernst & Young-Canada to audit its financial statements in accordance with Canadian GAAP. Canadian-GAAP is different, Canadian accepted accounting principals are different than United States general accounting principles. CLIC engaged these engagements in terms of Toronto. The terms of engagements were to be in Toronto. Ernst & Young of Canada issued its engagement letters from Toronto offices, no portions of audit ordered pursuant to Michigan accounting standards. In fact, Michigan professional standards concerning certified public accountants at that time provided only accountants in State of Michigan practice only in the State of Michigan. Ernst & Young's not licensed to practice in the State of Michigan.

Ernst & Young-Canada supervised audits of CLIC from its Toronto offices. Ernst & Young-Canada was paid in

Toronto by CLIC from CLIC Toronto offices. All payment for these audits was in Canadian currency, not US currency. Ernst & Young-Canada received no portion of its audit fees for CLIC from the State of Michigan, or from any Michigan residents.

It is indisputed in this case, Your Honor, that Ernst & Young-Canada did not send its audit opinions to anyone in the State of Michigan, including the Michigan Insurance Bureau, nor did it send any information, financial information about Confederation Life to anyone in the State of Michigan. In addition to, contrary to what Plaintiff suggested in his brief in opposition to our motion, Ernst & Young-Canada, in its audit opinions, were not addressed to anyone in the State of Michigan. They were addressed to policyholders and directors, but they did not target anybody in the State of Michigan.

Your Honor, Ernst & Young-Canada also did not solicit any business in the State of Michigan. It does not advertise in the State of Michigan, and does not ask for Michigan residents to be its clients.

In short, and with respect to these audit engagements that are at issue here, none of the Ernst & Young Canada professional work performed in the State of Michigan or performed pursuant to any Michigan professional standards, none of the payments for those engagements came from the State of Michigan. Piersons (sp) and Sons didn't send audit opinions in the State of Michigan, and those services were performed for a non-Michigan resident, that is CLIC.

Your Honor, I would like to describe, very briefly, Ernst & Young-Canada more generally, not just in the context of these engagements. Ernst & Young-Canada, as I said, is a Canadian partnership. Canadian professional rules governing

chartered accountants prohibit anyone who is not a chartered accountant from being partner of the Canadian accounting firm. By the same token, Michigan professional rules prohibit anyone who is not a certified public accountant in the State of Michigan from being a partner of an accounting firm that practices in the State of Michigan.

Ernst & Young of Canada has no partners or employees in the State of Michigan. It has no registered agent for services processed in the State of Michigan. It has no offices in the State of Michigan. It has no real estate in the State of Michigan. It has no personal property in the State of Michigan. It does not maintain any books, records, or bank accounts in the State of Michigan. And, as I stated before, it does not solicit or advertise in the State of Michigan. Given the collaboration of contacts between Ernst & Young-Canada and the State of Michigan, this Court cannot confer personal jurisdiction within the confines of the due process clause of the United States Constitution.

I would like to talk first, and this will be where most of my argument plays on the first requirement of the due process analysis, which is that the Defendant must have purposefully availed itself of the privilege of doing business in the State of Michigan. Unless the Plaintiff can establish this, the personal jurisdiction inquiry ends. Because that is a requisite to personal jurisdiction.

Your Honor, there is no case that has found that with a Defendant, a non-resident Defendant who is a professional, there is no case found that that foreign resident Defendant is subject to personal jurisdiction under circumstances like this case. Our brief cites several cases to the Court, and the Plaintiff has not come up with any case, apparently has also been unable

to find any case that under circumstances like this which confer personal jurisdiction.

Under Michigan law, a non-resident Defendant who is providing professional services subject to the personal jurisdiction of this Court, is only under two circumstances. One is if the non-resident professional has actively negotiated the retainer agreement in the State of Michigan. The other circumstance is until the non-resident Defendant has actively solicited through advertising or some other means, clients in the State of Michigan, neither of those requirements has been met here.

Your Honor, it is undisputed that this engagement letter was negotiated in Toronto, Canada, not in the State of Michigan. It is also undisputed that there is no soliciting or advertising in the state of Canada.

In addition, Your Honor, this case is lacking two of the fundamental requirements that you see in virtually every single personal jurisdiction case involving non-resident Defendants. We do not have a Michigan clients. In this case CLIC is a Canadian company. We also do not have a non-resident Defendant professional obtaining any of its fees for the professional services from the State of Michigan.

THE COURT: Well, this Ernst & Young in Canada, what do they audit, or it audits? Did it audit the business of Confederation Life in Michigan or United States?

MS. TANIS: It audited over all the financial statements of the company.

THE COURT: So it engaged itself in auditing the business of Confederation Life of the United States?

MS. TANIS: Yes. It included in those audits. But that alone is not sufficient, Your Honor.

Let me describe ---

THE COURT: I am not saying it is. But that was what they did, right?

MS. TANIS: They did do that.

THE COURT: So it's Mr. Walsh's contention that that wasn't an accurate portrayal of its business of the company, financial help of the company? If they are not responsible, who is?

MS. TANIS: Well, Your Honor, the issue is not ---

THE COURT: I mean, Ernst & Young-Canada did the audit. They audited the business of the Confederation Life of the United States.

MS. TANIS: But, Your Honor, the critical inquiry is what contacts did Ernst & Young-Canada have with the State of Michigan. Merely because the company might be doing business in several jurisdictions does not mean Ernst & Young-Canada can be hauled into court in every jurisdiction in which the company did business.

THE COURT: You have a rather unusual circumstance. We have something totally unlike everything else.

MS. TANIS: Your Honor, we have a situation where we have a non-resident professional. In that situation, this is not a unique circumstance.

If I may, Your Honor, perhaps I could describe a couple of the cases having to do with professional services. The first case is a Michigan appellate Court case, which is the case of Woodward versus Keenan. And in that case a Michigan resident obtained services from an Indiana physician. And she went to Indiana, and the physician diagnosed her condition. The Indiana physician obviously knew that he had a Michigan patient. He diagnosed her condition. And then he sent a letter to her personal treating physician in the State of Michigan so he directly sent the letter into the State of Michigan describing the diagnosis. In that diagnosis, he failed to diagnose a brain tumor that this patient had. And even with those contacts of actually having a Michigan client, and mailing the diagnosis into the State of Michigan, Plaintiff then claimed that she had relied on that diagnosis by failing to get surgery in time.

Even with those types of substantial contacts with the State of Michigan, the Michigan appellate court said that the cases are uniformly rejected, a finding of personal jurisdiction would exist under those circumstances. So the mere awareness that the professional is auditing or treating someone who may have some contact with the State of Michigan is not adequate. The Michigan Supreme Court has stated in the Khalaf opinion that we have cited in our brief, just because somebody knows that one of his clients may be doing business in the State of Michigan is not adequate. Because that's the wrong focus. The focus needs to be on the contacts between Ernst & Young-Canada and the State of Michigan.

Your Honor, for this Court to confer personal jurisdiction in this case would be unprecedented, and would extend motions of personal jurisdiction beyond what any Court to date has been willing to do.

The case law is substantially against the Plaintiff on this point. So what does the Plaintiff do? Well, the Plaintiff's major argument, again, confers personal jurisdiction in this case, is to argue Ernst & Young, one worldwide firm. Not suing Ernst & Young of Canada, suing one worldwide firm suing Ernst & Young of the United States partnership. In that sense, trying to get jurisdiction by saying Ernst & Young consists of both the United States components and Canada components, there is, however, no worldwide firm. The Plaintiff can say all he wants, but it is his burden of proof to come up with any evidence to show existence of a worldwide firm.

THE COURT: So there is a question of fact whether there is a worldwide firm?

MS. TANIS: No, Your Honor. I don't believe there is a legitimate question of fact. We have provided evidence to the Court with the form of affidavits showing that Ernst & Young-Canada is a separate and distinct partnership, that has no partners or employees in common with the United States firm, that there is no sharing of profits or revenues, that neither firm has any say in the management or inquirations of the other firm.

In fact, Your Honor, by virtue of both Canadian professional rules, and Michigan professional rules, Ernst & Young-Canada, and Ernst & Young the United States firm, cannot be partners with each other, because the rules prohibit that. We have a legal prohibition against the very argument that

Plaintiff is making. Your Honor, the Plaintiff has made this argument twice in this case already. It has been flatly rejected twice in this case. He made the argument first to Magistrate Judge Rowland in arguing that there was no federal court jurisdiction. Magistrate Judge Rowland flatly rejected it, said there are two distinct entities, there is a US firm, a Canadian firm. In fact, Judge Rowland said once Plaintiff found out the true nature of these firms, the Plaintiff went out and served the United States firm. The Plaintiff then tried to make the exact same argument to Judge Enslen in federal court.

THE COURT: Neither one of those judges have this case anymore, right?

MS. TANIS: No, Your Honor. I am using this for —

THE COURT: I wish they had kept it. Maybe that's why they got rid of it.

MS. TANIS: It may be, Your Honor.

THE COURT: They didn't wants to set any precedence.

MS. TANIS: Well, Your Honor, they didn't really need to set any precedence. Because on this point, other courts in the country have set precedence. In fact, other Courts that has decided this issue worldwide firm corporation decided the issue against the Plaintiff is taking the only thing Plaintiff proffers to the Court, the worldwide firm theory part of a marketing brochure, describing Ernst & Young as a worldwide professional firm. Many courts have decided this issue in the country.

THE COURT: I recall, Mr. Walsh, last week, you wanted a whole bunch of their brochures, is that Ernst & Young?

MR. WALSH: I don't know, you know, some of them say Ernst & Young.

THE COURT: You are not the lawyer that wanted a bunch ---

MR. WALSH: Oh, I did, I did. I think they are going to be produced, for some reason, in camera.

THE COURT: That's in another case?

MR. WALSH: No, that's another Defendant. I guess they don't want the world to see them, so they are going to be produced in camera.

THE COURT: I am sure I am going to be enthralled looking at them. I always put the mute button on my TV when the ad comes on.

MS. TANIS: In any event ---

THE COURT: Sorry to interrupt.

MS. TANIS: No, that's fine. Of course, if you have any questions, I would rather answer your questions than just talk at you.

In any event, there is no worldwide firm tacitly conceding this point. If you look at Plaintiff's brief in opposition to our motion, the lionshare of the Plaintiff's argument, based on the

assumption Ernst and Young-Canada is, in fact, a separate and distinct entity.

With respect to Ernst & Young-Canada to being a separate and distinct entity, Plaintiff has basically two arguments beginning with our statement of if were fully availing ourselves of doing business in the State of Michigan, the first suggestion in Plaintiff's brief in opposition, to tell you what I have outlined, in fact, in this case are not facts, Ernst & Young-Canada have had more contacts in the State of Michigan than what we have said. Essentially what Plaintiff says in his brief, Ernst & Young-Canada directly send audit opinions in the State of Michigan. Your Honor, we submitted an affidavit, in fact, two affidavits that state Ernst & Young-Canada did not send those audit opinions into the State of Michigan. The Plaintiff has zero evidence. And I challenge the Plaintiff to come up with it today, if he has got it.

THE COURT: Is it a requirement that someone submit them to the Insurance Commission?

MS. TANIS: Your Honor, it is not a requirement on Ernst & Young-Canada.

THE COURT: Well, Ernst & Young supplied them for Confederation Life. Then may we assume Confederation Life supplied them with the Insurance Commission?

MS. TANIS: Presumably if they were supplied through the Insurance Commissioner through Confederation Life, but Ernst & Young audited Canadian CLIC pursuant to Canadian statutory requirements through the financial statements.

THE COURT: I understand. That's the audit that Confederation Life relied upon to submit to the Michigan Insurance Commissioner.

MS. TANIS: If they were submitted, it was submitted by CLIC.

THE COURT: If they did.

MS. TANIS: Your Honor, however, again, the focus must be on the Defendant who is challenging jurisdiction. And even, Your Honor, even if Ernst & Young-Canada had sent its audit opinions directly to the State of Michigan, that would not be good enough. And the Michigan appellate courts has already told us that in the Woodward opinion, that's the case with the Indiana physician sending a letter directly to the State of Michigan, contains the very diagnosis that the Plaintiff claims should be relied upon to her entry into the State of Michigan. So there isn't any evidence Ernst & young-Canada sent those audit opinions into the State of Michigan. Even if there were, the Michigan appellate court already said that is not a sufficient basis for personal jurisdiction.

The Plaintiff's next argument, only other argument against the purposeful availment cause of action analysis to say it is foreseeable to Ernst & Young-Canada that is audit opinions might make their way into the State of Michigan. Your Honor, Mr. Alter has already referred the Court to the Asahi case, but that case, as well as the United States Supreme Court decision in Burger King upon which Plaintiff relies, various Michigan Supreme Court cases and various appellate court cases all uniformly hold that mere foreseeability that your conduct may have an effect on in the forum state, cannot, as a matter of constitutional law, cannot confer personal jurisdiction on the

Defendant. That is Black Letter Constitutional Law. I was surprised that the Plaintiff did not cite that.

THE COURT: You mean to tell me that Ernst & Young, doing audit of a business, of a company, a company that does business in the United States, has no reason to assume that that audit might go to that foreign country?

MS. TANIS: Your Honor, what I am saying even if Ernst & Young-Canada had a reason to assume it might go there, that as a matter of Black Letter Law, the Untied States Supreme Court law, Michigan Supreme Court law, that is an insufficient contact to confer personal jurisdiction. The Supreme Court of the United States and Michigan have said that over and over and over again. Foreseeability, even if the Defendant says, yes, I foresaw that it was going to go there, is inadequate, is a matter of law.

Your Honor, the second requirement ---

THE COURT: You see, what you have here, something that's a little bit different than conferring jurisdictions for purposes of liability and damages and the like. What is proposed here, the Rehabilitator is trying to gather together the assets of this company and the Rehabilitator believes that Ernst & Young had something to do with the diminution of those assets by improper audits, et cetera, et cetera. And these directors and officers and people like that had some direct inquiry in the diminution of the assets in the company. All the Rehabilitator wants to do, get all the money together that he can so that the policyholders, persons who paid premiums over years and years to Confederation Life, are somewhat made whole. That's a little bit different than suing

someone for some personal liability under a tort theory, or something of that sort.

MS. TANIS: Your Honor, I understand the point that you are making, it is, however, not that is a proper ground for conferring personal jurisdiction. The Insurance Commissioner is not above the constitutional requirements of the United States Constitution just because he is an Insurance Commissioner.

THE COURT: I understand the president is not either.

MS. TANIS: That's correct, Your Honor. It doesn't matter what his intent is in pursing or what he hopes to accomplish in his lawsuit. The point is, if there isn't personal jurisdiction, he is going to have to go get that relief against Ernst & Young-Canada.

THE COURT: I don't know what Mr. Walsh wants to get from Ernst & Young. What are you exactly looking for from Ernst & Young, Mr. Walsh?

MR. WALSH: Money.

THE COURT: You are looking for money?

MR. WALSH: Yes.

THE COURT: You wants to then respond in damages?

MR. WALSH: Yes, to the harm they have caused.

THE COURT: Along with these directors and officers?

MR. WALSH: Excuse me. The Ernst & Young ---

THE COURT: Yeah, well, Confederation Life and Mr. Alter's clients. It's all one ball of wax. He wants some money from all these folks so you can gather all the assets together. And this money, this response to damages is part of this ball of wax money.

MR. WALSH: Yeah. About a billion dollars, Your Honor.

MS. TANIS: Your Honor, in that sense, this Plaintiff is not particularly different than any other Plaintiff. However, again, that is not the relevant inquiry. If that could be the relevant inquiry, it would turn due process and constitutional principals on their head. Where the inquiry is the Defendants' contact with the State, the Commissioner, as he is trying to do right now in Ontario, can go to Ontario, get relief against Ernst & Young-Canada. This is not a situation where the Commissioner is without any jurisdiction with which to get that relief. He can't just decided to sue in the State of Michigan to ignore the constitutional limitations and just go after Ernst & Young-Canada because he has what he believes a good cause to do it. The due process clause of the constitution, Your Honor, protects all Defendants, whether those Defendants are good, bad or indifferent. And the level of culpability that has been alleged is utterly irrelevant as it must be to this constitutional inquiry.

Your Honor, very briefly, there are two other things besides purposeful availment that the Plaintiff has to prove in this case to get jurisdiction. The second prong of constitutional analysis, whether the cause of action arose from the Defendants' contacts with the forum state. That's impossible here, because none of the audit work was performed. Ernst & Young-Canada is being sued for its audit work for CLIC, none

of that audit work performed in the State of Michigan. So the cause of action could not have arisen through Ernst & Young's contacts in the State of Michigan for which there were none.

The third prong, whether the Defendants' contacts are so substantial within the State of Michigan that it would be fair and reasonable to exert jurisdiction. There is really a requirement that assumes in many ways, that the Plaintiff has been able to establish purposeful availment. Plaintiff has be able to establish that the cause of action arose from the contacts. But for some other reason, it would be unfair to exercise jurisdiction of the Defendant.

Mr. Alter has already alerted the Court to the Asahi opinion. I won't belabor the point. But where the United States Supreme Court requires, and as does the Michigan Court, require the Court to consider that this is not just a non-resident Defendant, but this is a foreign Defendant, which creates additional significant burden, particularly, for the accountants, Your Honor, who have their own professional standards in Canada, who must comply with a totally different set of standards that apply in the United States.

My last point, Your Honor, again, is to make a point that at least if Plaintiff's brief in opposition is any indicator what Plaintiff will argue to the Court, Ernst & Young of Canada did something bad here. Ernst & Young of Canada should be able to be sued. I am hopeful and confident that this Court would not prejudge Ernst & Young-Canada at this point. But in any event, that argument is utterly irrelevant to the due process analysis. Ernst & Young-Canada, like everybody else, Defendant is entitled to the protection of the due process clause. Thank you, Your Honor.

THE COURT: Mr. Walsh?

MR. WALSH: Thank you, Your Honor. Let's correct a few things. First off, one, Ernst & Young did work for a Michigan resident. The legislature has declared that an alien insurer, using Michigan as its state of entry, is domiciled here. Domicile means a resident of Michigan. So what we have is, Ernst & Young misrepresenting the financial status of a Michigan resident. Let's get something else straight, Magistrate Rowland did not say that Ernst & Young-Canada and Ernst & Young-US and Ernst & Young-UK didn't come together to do this audit. You have got a wonderful straw man. They are separate partnerships, US, Canada, UK. That doesn't tell us anything, Your Honor. That's like saying you are a separate individual from Judge Giddings, who is a separate individual from Judge Collette. But when I talk about the Ingham County Circuit Court bench, I refer to all of you.

Your Honor, in 1992 and 1993, Ernst & Young made an audit proposal to Confederation Life. We have attached a copy. And in it, it talks about our Atlanta office doing certain work. It talks about our UK office doing certain work. And you can read the entire document, Your Honor. It never says Ernest & Young-Canada, it talks about three, maybe distinct partnerships. But three locations, coming together to do an audit.

And what you have got here, Your Honor, is the first step of a shell game. Because Mr. O'Ragan, with who is a Canadian partner for Ernst & Young, says the US branch, that's the problem you have got. You have got this US branch in rehabilitation. That audit was done by Ernst & Young-US. Ernst & Young-US says we are subject to your jurisdiction, Your Honor. But we didn't sign the audit opinion. That's those Canadians. Now, these folks can come together, they can lock

arms when it comes to soliciting business, when they describe to Confederation what they are doing, you have got US, UK and Canada all arm and arm. They make a joint proposal, and they go ahead and do the work. Which, when it comes time to ask someone to answer for poor work, for devious work for misleading people, they all go. I have nothing to do with that fellow.

Your Honor, that's not what they tell the world constantly. Here is a brochure, you can go to the Ernst & Young officers here in Detroit, Kalamazoo, pick it up. It talks about, this is page two, our North American offices assisted in an acquisition of a Canadian-owned retail business in the United States. North America means, to me, Canada, US, maybe Mexico.

I go to page eight, the multi-national Ernst & Young team included in international tax professionals with the understanding of the financial services regulations from the United Kingdom, United States, Japan, Hong Kong and Australia.

I go to page 11, immediately a team of management level auditors from Ernst & Young, officers of Western Germany, the United Kingdom and United States moved into the East German locations. Here they did the same thing. They got a team. The team is described in their audit overview. People are named from Atlanta. That's the US member of the team from Toronto the Canadian member of the team from the United Kingdom. They come together and do a job. They do it poorly, but they say, oh, please doesn't make me come to court in the United States, and I am going to divorce myself from my team member when there is a problem. They did extensive work for a US resident, a Michigan resident, and they did it poorly.

Now, what do they say in that audit overview, audit objective, in accepting the audit engagement of Confederation Life Insurance Company? The company, we assume a responsibility to the policyholders, Your Honor, there are 200,000 policyholders in the United States. The legislature has said the representative of that policyholder is the Commissioner of Insurance. And, yet, someone stands in front of you today and says it would violate due process to make them come and answer to the statutory representative of the policyholders to whom they undertook a responsibility.

Every year their audit opinion is in the annual statement. It's addressed, not to Canadian policyholders, it says to the policyholders and directors of Confederation Life Insurance Company. It didn't say to the Canadian policyholders, it said the policyholders.

Your Honor, there is a simple question. If a Michigan domiciled insurance company, and the problem that Confederation Life is in, can't call its auditor to task in Michigan. Where can they call that auditor to task, Arizona, New Mexico, Florida?

THE COURT: Canada.

MR. WALSH: That's what they are saying. They are saying weekly to 200,000 people in the United States we can tell them that everybody is rosey with this company, when this company is hemorrhaging. But don't dare ever ask us to be responsible for our lives in the United States Court. That's outrageous, due process.

THE COURT: You could see, sue them in Canada.

MR. WALSH: Yes, but I don't have standing, the Commissioner doesn't have standing to represent policyholders in Canada. What they are saying is, all 200,000 policyholders can go up and make their claims. And if they didn't want to be sued in the United States, then they should have refused to do work for an insurance company where two-thirds of its business was in the United States.

And Your Honor, hit the nail on the head when you asked Ms. Tanis, oh, you didn't lick the stamp on the envelope that sent your audit to Michigan. No, they didn't lick the stamp. But they gave their clients, Confederation, a letter saying we are aware of requirements in Michigan law, and we are letting you send our opinion to the Commissioner. Because if the Commissioner did not get an audited opinion from Ernst & Young, CLIC would have been out of business in the United States.

Chapter 10 of the Insurance Code specifically requires that an alien insurer, such as CLIC, file with the Commissioner the opinion of its auditor, and Ernst & Young knew that its opinion was gong to be filed. Exhibit I to our motion is their letter. And they wrote the Board of Directors, said, send our opinion of Confederation's status to Michigan. If they couldn't have done that, if they could have not given that awareness letter, is there any question that they would have lost this million and a half dollar a year client? Confederation was not going to hire an auditor that would not agree that its opinion could be sent to Michigan. They knew their opinion was going to Michigan. They knew the Michigan Insurance Bureau was going to rely on it. They knew that Michigan was the domicile, the residents, in the United States of their clients.

A few other things that have to be cleared up, Your Honor. This notion that Ernst & Young-Canada, if we split these folks apart, that Ernst & Young-Canada doesn't exist in Michigan. Somebody picked up this brochure just the other day, Ernst & Young Consulting Services, back page, Canadian locations. Well, we just heard that US accountants can't practice in Canada. Canadian accountants can't practice in the US. What is this Canadian location for except trying to drum up business?

This is the tax guide, Your Honor, we have got several pages, names and phone numbers of Canadian accountants. You can pick this up in Michigan. They may not be a worldwide firm, they may only come together on occasion as teams as they did here. But its ridiculous for Ms. Tanis to get up and say that her client doesn't advertise in Michigan.

Your Honor, due process definitely allows this Court to exercise jurisdiction over an accounting firm that knows its opinions are going to be sent to the Michigan Insurance Bureau, relied on by the Michigan Insurance Bureau, knows that its opinions are going to be relied on by policyholders, who unfortunately for Your Honor, all come before you. You have got to deal with these policyholders in the United States. And, again, they took on a responsibility to the policyholders, and Ms. Tanis didn't tell you of one case where someone said, I take on an express response to someone. But when it comes time to answer for that responsibility, watch out, I am running away. I won't go where the recipients of my client lives. They caused enormous consequences in Michigan. They had enormous contact in Michigan. They sent false statements to Michigan repeatedly. And we are only here asking them to answer for those statements, Your Honor. This rehabilitation can't go forward, and the legislature's scheme for dealing with

alien insurers would collapse if accountants for alien insurers could come here and say, I told you, I helped my clients get into the State of Michigan, which enabled them to do business throughout the United States. I helped my client misrepresent its financial condition to the Michigan Insurance Bureau. But when the problem comes, when it's crunch time, oh, you will never see me crossing the border, all of my shenanigans, all of my wrongdoings, I did out of Toronto. I have duped you, Michigan official. I have duped out, Michigan policyholders. But so what? That's not due process, that couldn't be due process. Thank you.

THE COURT: Anything further?

MS. TANIS: Your Honor, just a few points of clarification.

First, Mr. Walsh apparently is of the view, as long as there is joint and several liability among two separate partnerships, somehow you could just create association out of thin area and then say, gee, that Defendant that I otherwise would not have had jurisdiction over, I have got jurisdiction over just by virtue of joint and several liability. Due process clause does not work that way.

Additionally, as Magistrate Judge Rowland found, the only worldwide Ernst & Young entity, a company by the name of EYI, not an accounting firm, but rather is an international organization to which the Ernst & Young firms belong, Mr. Walsh has misrepresented to Your Honor what this awareness letter is in Exhibit I. It does not say anywhere in it that Ernst & Young knows that CLIC is going to be sending the audit opinions to the State of Michigan. What it says, this letter is furnished solely for you, that is CLIC is to comply with Section

901 of the Michigan Insurance Code and should be used for no other purpose. It does not say anything about, you can go ahead and send that to the State of Michigan.

The marketing brochure that Mr. Walsh has apparently picked up from somewhere, there is no evidentiary basis for it, picked up from somewhere. Of course, he has not provided it to us. What I hear him say, it's Ernst & Young consulting group that would be a separate partnership, that is not the Defendant that is even being sued. Can Mr. Walsh go to Canada and sue Ernst & Young in Canada? The answer is yes. Just because he doesn't have standing to represent the Canadian policyholder does not mean he would not have standing in Ontario to represent the US policyholders, assuming he would have that standing in the United States, of course, that issue would be in dispute.

In fact, Your Honor, he is trying, he has asked the Ontario court to allow him to assert claims in Ontario. There is another jurisdiction by which he could assert these claims against Ernst & Young-Canada. Your Honor, I do have a notebook of cases, the main case upon Ernst & Young-Canada relies, if I may give them to your law clerk for the Court's review. I should have done this at the beginning of my argument, but I didn't.

In conclusion, we ask the Court to grant Ernst & Young's motion for summary disposition under lack of personal jurisdiction.

THE COURT: Well, the Court's inclined to agree with Mr. Walsh that this company in Canada, albeit a separate entity of Ernst & Young in the United States to Ernst & Young-UK, which is the United Kingdom, something of that sort, they did audits of this company regarding their business in the United

States, including the State of Michigan. I think they have every reason to believe that that audit is going to come to the attention of the Insurance Commissioner in the State of Michigan, who is supervising their activities in this country through the State of Michigan. And they have every reason to believe that that ought to be accurate. If it's not, they ought to be able to respond. I am going to deny the motion.

MR. WALSH: Thank you, Your Honor.

THE COURT: Will you prepare the order on that?

MR. WALSH: Yes, Your Honor. . . .